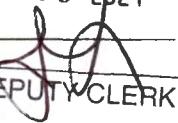


FILED  
HARRISBURG, PA  
DISTRICT COURT OF THE UNITED STATES  
MIDDLE DISTRICT OF PENNSYLVANIA FEB 05 2024

Michael Miller  
Petitioner,  
v.  
COUNTY OF LANCASTER, ET. AL.  
[political subdivision];  
OFFICE OF OPEN RECORDS  
[State agency]  
Respondents.

PER   
DEPUTY CLERK

Case No: 1:24-CV-00014-SES  
Magistrate Judge, Susan E. Schwab

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**PETITIONER'S AFFIDAVIT AND DEMAND FOR ENTRY OF  
DEFAULT**

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Petitioner, Michael Miller [“Miller”] files an affidavit and demand for the clerk to enter a default for Respondent, Office of Open Records [“OOR”], and in support states:

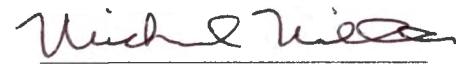
**AFFIDAVIT**

UNDER PENALTIES OF PERJURY, the undersigned affiant states:

1. My name is Michael Miller [“I” or “my”]:
2. I filed a petition in the District Court of the United States of the Middle District of Pennsylvania on January 4, 2024 (Doc. 1).
3. I named Office of Open Records as a Respondent.

4. I made multiple factual allegations of acts done by Office of Open Records through its agents.
5. I verified these factual allegations by an affidavit.
6. I provided timely and proper service of a summons and petition to Elizabeth Wagenseller, Executive Director of OOR, on January 11<sup>th</sup>, 2024. (Doc. 6)
7. OOR's responsive pleading was due on February 1, 2024. *See* Fed R. Civ. P. 12(a)(1)(A)(i).
8. As of February 2, 2024, OOR did not serve me an answer or otherwise defend. (Doc. 10).

FURTHER THE AFFIANT SAYETH NAUGHT.



**Michael Miller: Affiant**

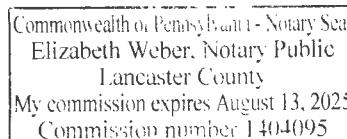
LANCASTER, PENNSYLVANIA

BEFORE ME this 5<sup>th</sup> day of February, 2024 personally appeared Michael Miller who, being by me first duly sworn and identified in accordance with Pennsylvania law, affirmed the foregoing in my presence.

Signature: Michael Miller

Printed: Elizabeth Weber

Notary Public



## **DEMAND FOR ENTRY OF DEFAULT FOR RESPONDENT, OFFICE OF OPEN RECORDS**

Miller demands the clerk enter a default for Respondent, Office of Open Records, and in support states:

1. Fed R. Civ. P. 55(a) states:

*“(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.”*

2. Practice for entry of default is directed by *DeTore v. LOCAL NO. 245, ETC.*, 511 F. Supp. 171 (D.N.Y. 1981), 176, which states:

*“The recognized practice is equally simple and brief. A resident defendant served with summons and complaint is to serve his answer on the plaintiff, and file it with the clerk with proof of service, within 20 days after having been served with process. Service of the answer on plaintiff's attorney is an essential part of this pleading step. Plaintiff's attorney, of course, will know whether he has been served with a copy of a defendant's answer or not.*

*If he is not served with answer within 20 days after process service was effected, the plaintiff's attorney need only file with the clerk an affidavit, or certification in lieu of oath, under penalty of perjury, 28 U.S.C. § 1746, establishing that more than 20 days have elapsed since service of the summons and complaint, and that no answer has been served. Thereupon, routinely and as a matter of course, the clerk enters the default of that defendant on the docket. No motion is required and no order is involved.”*

3. Citing *DeTore*, this Court clarified in *McClure v. City of Harrisburg, Civil No. 1: 14-CV-0958 (M.D. Pa. July 7, 2014)*, that the words “otherwise

defend," as used in Rule 55(a), have been interpreted to refer to motions to dismiss.

[See also *Kearney v. Hibner*, Civil No. 1: 13-CV-1892 (M.D. Pa. Dec. 2, 2013; and *NATIONWIDE PROPERTY & CASUALTY INSURANCE CO. v. Janis*, Civil Action No. 1: 08-cv-00153 (M.D. Pa. July 11, 2008).]

4. OOR's filing on February 1, 2024 was neither an answer nor a motion to dismiss. (Doc. 10)
5. By rule, OOR failed to plead or otherwise defend and that failure is shown by Miller's affidavit.
6. All conditions are met under Fed R. Civ. P. 55(a), therefore the clerk must enter OOR's default.

WHEREFORE, Miller demands the clerk enter a default for Respondent, Office of Open Records.

Respectfully Submitted:



Michael Miller  
108 N. Reading Rd, Ste F, 246  
Ephrata, PA 17522  
(717) 388-0163  
[reaganfive@protonmail.com](mailto:reaganfive@protonmail.com)

Date: February 5, 2024

**CERTIFICATE OF SERVICE**

I hereby certify that I served by e-mail a true and correct copy of this filing to the following:

Yarish, Mary Katherine  
15th Floor, Strawberry Square  
Attorney ID #328843  
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100 Pine Street  
Harrisburg, PA 17101  
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Respectfully Submitted,

/s/ Michael Miller  
Michael Miller  
108 N. Reading Rd., Ste F, 246  
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717-388-0163

Dated: February 5, 2023